IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 24183 of 2006(D)

PETITIONER:

R. DHANALAKSHMY, PROPRIETRIX,
SEEMATTI TEXTILES, KOLLAM.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

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1. THE DIVISIONAL RAILWAY MANAGER,
SOUTHERN RAILWAY, THIRUVANANTHAPURAM.

2. THE SENIOR DIVISIONAL COMMRCIAL MANAGER
SOUTHERN RAILWAY, DIVISIONAL OFFICE
COMMERCIAL BRANCH, THIRUVANANTHAPURAM.

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1 JUDGMENT DT 29.1.01 IN WA.3332/01.

P2 AGREEMENT DT 8.10.04 IN RESPECT OF KOLLAM JN..

P3 AGREEMETN DT 8.10.04 IN RESPECT OF ERNAKULAM JN.

P4 COMMUNICATION DT 9.5.06.

P5 COMMUNICATION DT 3.8.06 FROM R2.

P6 REPLY DT 23.8.06

P7 COMMUNICATION DT 18.11.03.

P8 REPLY TO EXT.P6 DT 30.8.06

RESPONDENT'S EXHIBITS:

R1 PETITIONER'S LETTER DT 30.6.06.

TRUE COPY

P.A. TO JUDGE

C.N. RAMACHANDRAN NAIR, J.

W.P. (C) No. 24183 OF 2006 D

Dated this the 29th day of November, 2006

J U D G M E N T

Petitioner was granted exclusive right for advertising by installing hoardings in the Ernakulam South and Kollam railway stations by the Southern Railways on an annual lease rent of Rs.5 lakhs at the Ernakulam South station and Rs.4 lakhs at the Kollam station. The contract was for a period of three years commencing from 1.6.2004 to 31.5.2007. The locations of hoardings were as identified vide Ext.P7 dated 18.11.2003. Admittedly, petitioner installed hoardings and remitted the rates to the Railways for the first two years. However, when time reacher for the petitioner has to remit the amount for the 3rd year, the petitioner raised an objection that petitioner was not allowed to install hoardings at Point Nos. 2 to 6 referred to in Ext.P7 and as shown in the sketch attached thereon. Petitioner in fact filed a representation before Railways vide Ext.P6 on 23.8.06 complaining that petitioner was not permitted to install hoardings at Plot Nos.2 to 6 in terms of Ext.P7 and, therefore, petitioner is entitled to get the proportioned amount already paid for the first two years adjusted towards licence fee for the third year. Counsel for the Railways produced Ext.R1, wherein it is seen written by the petitioner on 30.6.06 to the Railways undertaking to pay the amounts without any complaint whatsoever. The question, therefore, to be considered is whether the petitioner's later objection in non-remittance of the amount payable for the last year is tenable or not. I am unable to accept the

petitioner's claim because petitioner herself contends that from the very beginning petitioner was not allowed to install hoardings at Plot Nos.2 to 6 in terms of Ext.P7 issued on 18.11.03 i.e., prior the commencement of the licence period. If there is breach of contract from the side of Railways, I see no reason why the petitioner continued to remit the licence fee for the first two years. In fact, what is stated against item No.5 and item No.6 in Ext.P7 is that the hoardings at those two points should be shifted to another place. Therefore, if petitioner was interested, it was for the petitioner to install hoardings in the places to be identified by the Railways based on Ext.P7. Therefore, I am of the view that the complaint raised after two and a half years of licence period is without any bonafides. It is clear from Ext.R1 that upto 30.6.06, the petitioner has no complaint and, therefore, the present effort is only to dodge payment.

Since Railways have permitted shifting of hoardings in item nos.5 and 6, I feel petitioner can still do it for the balance period i.e., upto 31.5.2007, after paying the entire arrears at the agreed rate. The petitioner is granted ten days' time to make payment and on payment, she is free to retain hoardings for the balance period. If petitioner commits default, Railways will be free to take appropriate action for breach.

The writ petition is disposed of as above.

(C.N. RAMACHANDRAN NAIR, JUDGE)

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